

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 6/2/2008	Department ID Number: PD-08-005

**CITY OF HUNTINGTON BEACH  
REQUEST FOR CITY COUNCIL ACTION**

**SUBMITTED TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS

**SUBMITTED BY:** Paul Emery, Interim City Administrator

**PREPARED BY:** Kenneth W. Small, Chief of Police

**SUBJECT:** Adopt Ordinance Adding Huntington Beach Municipal Code Chapters 9.56 and 9.57 Relating to the Possession, Sale, and Storage of Pressurized or Aerosol Paint Containers, Marking Pens, and Etching Tools.

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)
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**Statement of Issue:** The City of Huntington Beach has experienced a steady increase in the number of graffiti related crimes involving aerosol spray paint and etching or marking tools. Often the crime is committed by juveniles who acquired the spray paint or marking tool by theft from a retailer.

**Funding Source:** No funds required

**Recommended Action:**

**Motion to:** Adopt Ordinance No. 3805, An Ordinance of the City of Huntington Beach Adding Chapter 9.56 relating to the possession, sale, and storage of pressurized or aerosol paint containers.

**Motion to:** Adopt Ordinance No. 3806, An Ordinance of the City of Huntington Beach Adding Chapter 9.57 relating to the possession, sale, and storage of marking pens and etching tools.

**Alternative Action(s):**

Do not adopt Ordinance No. 3805 and Ordinance No. 3806 and direct staff accordingly.

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## REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 6/2/2008

DEPARTMENT ID NUMBER: PD-08-005

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### Analysis:

The Huntington Beach Police Department has investigated several crimes of vandalism in which aerosol paint and marking tools were stolen from local retailers from unsecured display shelves. The retailer is often unaware of the thefts until Police contact them during their investigation of the vandalism. There is no State of California law or statute which requires retailers to control accessibility of spray paint or marking tools. Proposed HBMC Chapter(s) 9.56.040 and 9.57.030 are written to control access to vandalism tools by requiring retailers to secure these items.

Requiring retailers to secure their spray paint and marking tools will reduce their availability to graffiti vandals resulting in an overall reduction of this type of crime throughout the city. A secondary benefit from the proposed ordinance is assisting retailers to better control their inventory and losses from undetected theft.

Currently, the City of Huntington Beach Municipal Code does not regulate the sale, possession, or storage of aerosol paint or marking tools. Penal Code section 594.1 (d) regulates the possession of these items. However, the section stipulates the object must be "in plain view to the public" and requires signage be posted at any public facility to include parks, beaches, playgrounds, etc. to be enforceable. The proposed ordinances address the limitations of the Penal Code sections by adding time restrictions for juveniles, eliminating the requirement for posting of the restrictions and removes the "in plain view" language. Penal Code section 594.2 addresses possession of vandalism tools, but, also requires a "with the intent to commit vandalism" element to the crime. The proposed ordinances eliminate the "intent" requirement.

The proposed ordinances also restrict persons from possessing these items in public parks or public buildings which are common targets of graffiti vandals. Furthermore, persons under the age of eighteen years are not allowed to possess spray paint or marking tools between the hours of six p.m. and six a.m., which is the most frequent time frame in which graffiti is applied.

The sale of spray paint and marking tools is also regulated with the proposed ordinances. It would be unlawful for any person (except a parent or legal guardian) to sell or furnish these items to anyone under the age of eighteen. This section generally mirrors Penal Code section 594.1.

Other local municipalities have adopted similar ordinances which have proven to be effective in controlling graffiti vandalism. It is anticipated that requiring retailers to secure these items will have little financial impact on the individual stores. Any cost associated with securing these items will likely be recouped in a short period of time due to the decreased theft of the products.

## REQUEST FOR CITY COUNCIL ACTION

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### Strategic Plan Goal:

Provide quality public service with the highest professional standards to meet community expectations and needs, assuring that the city is sufficiently equipped overall.

Environmental Status: N/A

### Attachment(s):

City Clerk's Page Number	No.	Description
4	1.	Ordinance No. <u>3805</u> , An Ordinance of the City of Huntington Beach Adding Chapter 9.56 relating to the possession, sale, and storage of pressurized or aerosol paint containers.
7	2.	Ordinance No. <u>3806</u> , An Ordinance of the City of Huntington Beach Adding Chapter 9.57 relating to the possession, sale, and storage of marking pens and etching tools.

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# ATTACHMENT #1

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AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING THE HUNTINGTON BEACH MUNICIPAL  
CODE BY ADDING CHAPTER 9.56 RELATING  
TO PRESSURIZED OR AEROSOL PAINT CONTAINERS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. The Huntington Beach Municipal Code is hereby amended by adding Chapter 9.56 - Pressurized Or Aerosol Paint Containers, said chapter to read as follows:

Chapter 9.56

**PRESSURIZED OR AEROSOL PAINT CONTAINERS**

**Sections:**

- 9.56.010 Sale or purchase prohibited.
- 9.56.020 Possession restricted.
- 9.56.030 Possession prohibited in public places.
- 9.56.040 Storage requirements.

**9.56.010 Sale or purchase prohibited.**

- a. It is unlawful for any person to sell, exchange, give or loan, or cause or permit to be sold, exchanged, given or loaned, any pressurized or aerosol container containing any substance commonly known as paint or dye to anyone under the age of eighteen years, unless such person is the parent or legal guardian of said minor.
- b. It is unlawful for anyone under the age of eighteen years to purchase any pressurized or aerosol container containing paint or dye.
- c. Evidence of majority may be established by a document issued by the federal government or a state, county or municipal government including, but not limited to, a motor vehicle operator's license, a registration certificate under the Selective Services Act, a passport or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of the individual.

**9.56.020 Possession restricted.** Between the hours of six p.m. and six a.m. it is unlawful for any person under the age of eighteen to have in his possession any pressurized or aerosol container containing any substance commonly known as paint or dye while on any public highway, street, alley or way, park, playground, swimming pool, or other public place, whether such person is or is not in any automobile, vehicle or other conveyance.

**9.56.030 Possession prohibited in public places.** It is unlawful for any person to have in his possession any pressurized or aerosol container containing any substance commonly known as paint or dye while in any public park, playground, beach, public parking lot, public building, swimming pool, or recreational facility (other than a highway, street, alley or way), except authorized employees of the city or an individual or authorized employee of an individual or company under contract with the city.

**9.56.040 Storage requirements.** Any business or establishment offering for sale to the public pressurized or aerosol paint containers regulated by this chapter shall keep, store and maintain such pressurized or aerosol paint containers in a place that is locked and secured or otherwise not directly accessible to the public.

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 2. This ordinance shall become effective 30 days after its adoption.

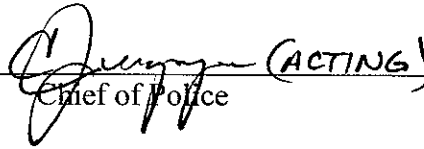
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

\_\_\_\_\_  
Mayor

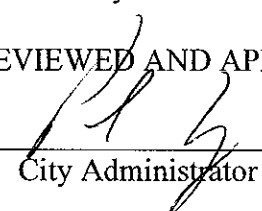
ATTEST:

\_\_\_\_\_  
City Clerk

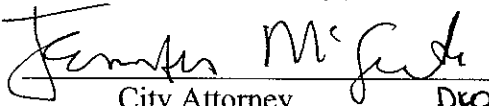
INITIATED AND APPROVED:

  
\_\_\_\_\_  
Chief of Police (ACTING)

REVIEWED AND APPROVED:

  
\_\_\_\_\_  
City Administrator

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Dkt 5/12/08

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G-2A . 7

# **ATTACHMENT #2**

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AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING THE HUNTINGTON BEACH MUNICIPAL BY ADDING  
CHAPTER 9.57 RELATING TO MARKING PENS AND ETCHING TOOLS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. The Huntington Beach Municipal Code is hereby amended by adding Chapter 9.57 – Marking Pens and Etching Tools, said chapter to read as follows:

Chapter 9.57

**MARKING PENS AND ETCHING TOOLS**

**Sections:**

9.57.010 Sale or purchase prohibited.

9.57.020 Possession prohibited in streets and other public places.

9.57.030 Storage requirements.

**9.57.010 Sale or purchase prohibited.**

- a. No person shall sell or cause to be sold to any person under the age of eighteen (18) years any marking pen with a tip exceeding four millimeters (four twenty-fifths of an inch) in size and containing anything other than a solution which can be removed with water after the solution dries.
- b. No person shall sell or cause to be sold to any person under the age of eighteen (18) years any etching tool capable of defacing property.
- c. Evidence of majority may be established by a document issued by the federal government or a state, county or municipal government including, but not limited, to a motor vehicle operator's license, a registration certificate issued under the Selective Service Act, a passport or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of the individual.

**9.57.020 Possession prohibited in streets and other public places.** No person under the age of eighteen (18) years shall have in his or her possession any marking pen or etching tool regulated by this chapter while on any public street or alley or in any other public place unless such person is accompanied by a parent or guardian.

**9.57.030 Storage requirements.** Any business or establishment offering for sale to the public marking pens or etching tools regulated by this chapter shall keep, store and maintain such

marking pens and etching tools in a place that is locked and secured, or otherwise not directly accessible to the public.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

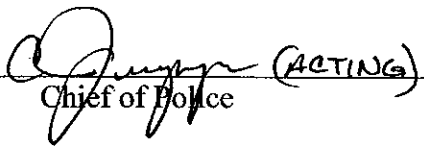
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

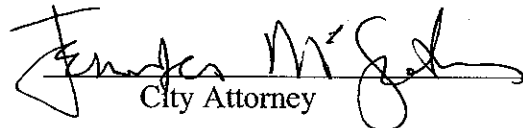
INITIATED AND APPROVED:

 (ACTING)  
\_\_\_\_\_  
Chief of Police

REVIEWED AND APPROVED:

  
\_\_\_\_\_  
City Administrator

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

DEO